IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1037 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANOJ L ABHANI

Versus

STATE OF GUJARAT

Appearance:

MR ANSHIN H DESAI for Petitioner.

Mr. Sudhir G. Mehta, AGP for respondents.

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 8/03/2002

CAV JUDGEMENT

By this petition under Article 226 of the Constitution of India, the petitioner has prayed for a writ of mandamus or any other writ, order, or direction, directing the respondents to appoint him forthwith on compassionate ground as per the policy of the Government. The petitioner has challenged the inaction of the respondents for not giving employment to the petitioner on compassionate grounds on account of death of his

father who was in the employment of the respondent No.2 and died during his employment with the respondents.

2. The brief facts, as stated in the petition, are that the petitioner's father, namely Liladharbhai Jamnadas Abhani was serving as a Senior Clerk in the G.P. High School, Mendrada, and after putting continuous service of more than 15 years, the petitioner's father expired on 2-1-1982 while he was in the employment. At the time of death of the petitioner's father, the petitioner was minor and hence he was not entitled to get the employment in place of his father. The petitioner however made an application on attainment of majority on 16-12-1988 for accommodating him in the employment.

3. The petitioner has further stated in the petition that at the time of death of his father, he was staying with his mother and two younger brothers. It was further stated that the petitioner's mother was illiterate and she could not be absorbed in place of the petitioner's father. The petitioner's family was very poor and he being the eldest son the entire responsibility of maintaining the family was cast upon him after the death of his father. Under adverse circumstances he completed his studies upto SSC in 1986 and after being eligible for employment he made an application in the prescribed proforma.

4. The petitioner has further stated that the Principal of G.P. High School, Mendrada, had also written a letter on 13-9-1988 to the District Education Officer, Junagadh, for giving employment to the petitioner on compassionate ground as the petitioner's father expired on 2-1-1982 while he was in service. The Principal of the said School again sent a reminder on 24-11-1988 for giving employment to the petitioner. Along with the said letter all necessary documents, such as ration card, SSC mark sheets, birth-date certificate etc., of the petitioner were forwarded to the District Education Officer, Junagadh.

5. The petitioner has further submitted that even after making the aforesaid application, the petitioner had made several enquiries with the respondent authorities and requests were repeatedly made by him from time to time. However no decision was taken by the respondent authorities and no communication was ever sent by the respondent authorities in connection with the application made by him. The petitioner was therefore left with no alternative but to approach this Court for appropriate reliefs in the matter. The present petition was admitted and Rule was issued by this Court on

7-7-1982. Till this date, no affidavit-in-reply has been filed by the respondent authorities and even at the time of hearing of this petition before me, the learned Assistant Government Pleader is not in a position to state as to whether any decision has been taken by the respondent authorities in connection with the application made by the petitioner. It is a very sorry state of affairs that the Government is not taking any decision even in such delicate matters where the question of one's livelihood and survival is involved. A person while making an application for implementation of the governmental policy is anxious to see that prompt decision may be taken, but here in the present case no action has been taken by the respondent-authorities even after service of the Rule by this Court way back in 1992. In such a situation, this Court cannot restrain itself from taking a serious view of the matter.

6. In the petition itself, the petitioner has relied on the decision of the Hon'ble Supreme Court in the case of Smt. Sushma Gosain and Others v. Union of India and Others, reported in AIR 1989 SC 1976, wherein it is held as under;

> "It can be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant."

7. The petitioner has further relied in the petition on the Government Resolution No. 1386/2286/(88)-G dated 4.7.1988. Clause 7 of the said Resolution states that if the dependent of the deceased employee is eligible for appointment as per Clause 4, the minimum age limit should be 15 years and if he is eligible for appointment as per Clause 3, the minimum age limit should be 17 years. However, if the dependent-wife or husband is illiterate and the children are minor, in that case if such minor children attain the age of majority as required under Clause 4 or Clause 3, they are entitled to make application. Without these requirements, their application would not be considered. Having placed

reliance on this Resolution, the petitioner has submitted that as soon as he attained the age of majority, he made an application for absorbing him in the employment and inspite of this Resolution passed by the State Government, no decision was taken by the respondent-authorities till this date.

8. At the time of hearing of this petition, over and above the judgment of the Hon'ble Supreme Court in the case of Smt. Sushma Gosain and Others (Supra), as well as the Government Resolution dated 4-7-1988, Mr. A.H. Desai, the learned advocate appearing for the petitioner has relied on number of decisions of this Court as well as of the Hon'ble Supreme Court in support of his case.

(A) The decision of the Hon'ble Supreme Court in the case of Smt. Phoolwati Vs. Union of India & Ors., reported in AIR 1991 S.C. 469, was cited for the proposition that when an employee dies in harness, one of his legal representatives would be provided with an employment on compassionate ground. Accordingly, the Hon'ble Supreme Court has directed in that case to the Union of India to take immediate steps for employing the second son in a suitable post commensurate with his educational qualification within a period of one month from the date of the said order.

(B) A decision of this Court in the case of Nisar Ahmad Abdulmiya Vs. State of Gujarat & Ors., reported in 1995 (2) G.L.H. 546, was cited for the proposition that, "The clear objective for granting such reliefs is to mitigate immediate hardships caused to the grieved family on account of death of bread-earner. If such appointments are delayed for indefinite period on the spacious (sic. pecious) ground of administrative exigencies, the very purpose of such policy will fail. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant."

(C) A Judgment of this Court in the case of Jagdishbhai Amrutbhai Patel Vs. Divisional Controller, reported in 1998 (1) GCD 306 (Guj.), was cited for the proposition that, "The compassion in such cases is the very essence by which the scheme of giving appointment has been

introduced and if such cases are rejected with a computer-machine application, oblivious of an orientation of compassion, the whole purpose of introducing such scheme would stand thwarted and defeated." It is further held in that case, that "the time limit of one year cannot be applied with that rigour to put an end to the consideration for appointment on compassionate ground in every case in which a ward of deceased employee fails to move application within time limit of one year fixed as a part and parcel of the procedure evolved by the employer not under any statutory rules but merely by way of executive instructions." It is further held in that case that, "Rejection of the application for appointment on compassionate ground on such a technical ground of no consequence cannot be held to be justified."

(D) A decision of this Court in Second Appeal No. 66 of 1998 with Civil Application No. 8307 of 1998, in the case of State of Gujarat Vs. Pareshkumar Vallabhdas Jarsania, was cited for the proposition, that "When the government servant dies leaving behind illiterate widow and minor children none of whom can be offered employment, period of five years can be relaxed."

(E) A decision of this Court in Second Appeal No. 123 of 1999, in the case of State of Gujarat & Ors Vs. Vilayatali Basirali Kadri, was cited for the proposition that, "The so-called technicality cannot come in the way of respondent in getting the appointment on compassionate ground."

(F) A decision of this Court in the case of Laxmiben Manubhai Parmar Vs. State of Gujarat & Anr., reported in 2001 (2) GLR 1284 was cited for the proposition that "The fact situation that the petitioner's husband was in employment since 1982, may be as a daily wager or badli worker and that his name was included in the list of employees to be regularised has not been disputed. In view of this factual position, the Court finds that the respondent-State of Gujarat and its functionaries which are part and parcel of the Welfare State cannot take advantage of the unfortunate demise of the petitioner's husband while his case for regularisation was pending. Had the petitioner not died, he too would have been regularised like the other employees. The

respondent-authorities cannot and should not disown the just and honest claim qua the petitioner, who is seeking compassionate appointment as her husband died on 5-12-1998."

(G) A decision of this Court in the case of Arvindkumar N. Bhatt Vs. State of Gujarat & Ors., reported in 2001 (1) G.L.H. 517, was cited for the proposition that the delay in giving appointment on compassionate ground would frustrate the very purpose and object of policy of providing compassionate appointment. This Court has held in that case, that "the respondent has not taken any care to file the affidavit-in-reply against the petition. Not only that but no care has been taken to see that the respondents are represented to assist this Court in such a peculiar case in the administration of justice. After his medical check-up in the year 1989, till this date, nothing has been heard from the respondents as to what has happened with his application for compassionate appointment. It is a sorry state of affairs that a man has remained unemployed since long from 1989 till this date. Therefore, according to my view, the petitioner is entitled to compassionate appointment as per the policy of the respondents."

(H) A decision of this Court in the case of Indrapalsinh P. Chauhan Vs. State of Gujarat and Ors., reported in 2001(2) G.L.H. 214, was cited for the proposition that the dependent of the deceased employee must get appointment and if such benefit is arbitrarily or illegally denied and the petitioner is deprived of his legal right, in such a situation, it is the duty of the Court to see that the petitioner get the result of the legal right which is wrongly denied to the petitioner. In this context, this Court has held that :

"7. Normally this Court cannot pass the order of directing to the respondents to give appointment to the petitioner. But looking to the peculiar facts of the case and father of the petitioner died on 18th September 1985 and his claim of compassionate appointment has been rejected on 29th January 1992 and the petition has been filed in the year 1993, remained pending before this Court for seven years and, therefore,

now there is no meaning or no purpose would be served in giving direction to the respondents to consider the case of the petitioner in light of the aforesaid observations made by this Court as well as Apex Court. Considering the mental agony of the petitioner who remained out of job for about more than 8 years because of wrong interpretation of the respondents in respect of the Government Resolution dated 4th July 1988 on account of illegal decision taken by the respondents inspite of the fact that very circular has been examined by this Court in connection with every same respondents and passed order on 4th July 1992. It is quite surprising to note that even though, meanwhile during the pendency of the present petition, the case of the petitioner is not considered by the respondents."

(I) Lastly, a decision of the Hon'ble Supreme Court, in the case of Balbir Kaur and Another V. Steel Authority of India Ltd and Ors., reported in 2000 AIR SCW 1745, was cited for the proposition that "The sudden jerk in the family by reason of the death of the bread earner can only be absorbed by some lump sum amount being made available to the family. This is rather unfortunate but this is a reality. The feeling of security drops to zero on the death of the bread earner and insecurity thereafter reigns and it is at that juncture if some lump sum amount is made available with a compassionate appointment, the grief stricken family may find some solace to the mental agony and manage its affairs in the normal course of events. It is not that monetary benefit would be the replacement of the bread earner, but that would undoubtedly bring some solace to the situation. The introduction of the family benefit scheme vide tripartite agreement, which enabled the employees family to receive regular monthly payment equivalent to the basic pay together with dearness allowance last drawn by the deceased or disabled employee till the normal date of superannuation of the employee in question in lieu of depositing the lump sum provident fund and gratuity amount with the employer cannot be in any way equated with the benefit of compassionate appointments. The introduction of family benefit scheme cannot be a ground to refuse benefit of compassionate appointment."

9. On the basis of the abovereferred judgments of this Court as well as of the Hon'ble Supreme Court of India, the learned Advocate for the petitioner has strongly urged before me that the petitioner should be given appointment on compassionate ground forthwith and that there was no justification on the part of the respondent-authorities not to take any decision and to sleep over the petitioner's application for all these years. The respondents have not only denied the benefit to the petitioner, but they have acted contrary to the letter and spirit of the governmental policy expressly laid down in the Resolution dated 4th July 1988. The petitioner's application as well as the letters and reminders sent by the Principal of G.P. High School, Mendrada, and also subsequent requests made by the petitioner from time to time have failed to awake the Government machinery. Even the service of Rule issued by this Court has also not inspired the respondent-authorities to take any prompt decision in the matter. In light of this factual background, the learned advocate for the petitioner has urged that a mandatory direction should be issued by this Court directing the respondents to give suitable job to the petitioner forthwith and that the present petition be allowed with compensatory costs.

10. The learned Assistant Government Pleader, appearing on behalf of the respondent-authorities, is not in a position to controvert any of the facts stated in the petition nor any of the submissions made by the learned advocate appearing for the petitioner. As a matter of fact, no assistance is rendered by the learned A.G.P., except by giving the stock reply that he has not received any instruction in the matter. No explanation has come forward from the learned A.G.P. as to why no decision has been taken by the respondent authorities on the petitioner's application to seek employment on compassionate ground. There was no explanation to the effect as to why the affidavit-in-reply is not filed inspite of the fact that the Rule was served way back in 1992. The approach and attitude of the respondent-authorities is highly deprecable.

11. In the above view of the matter and having regard to the facts and circumstances of the present case and having considered the legal position on the subject matter of the present petition, I am of the opinion that the petitioner deserves for the relief claimed in the petition. As a matter of fact, this very Resolution dated 4-7-1988, on which heavy reliance was placed by the

petitioner, came up for consideration before this Court in the case of Indrapalsinh P. Chauhan (Supra), and this Court was at pains to observe that there was no meaning or no useful purpose would be served in giving direction to the respondents to consider the case of the petitioner in light of the observations made by this Court as well as Apex Court, and that considering the mental agony of the petitioner who remained out of job for about more than 8 years because of wrong interpretation made by the respondents, of the Government Resolution dated 4th July 1988. Since illegal decision was taken by them, a specific direction for the petitioner's absorption in the employment forthwith was required to be given. In the present case also, inspite of these being the same Resolution dated 4-7-1988, the respondent authorities have not taken any decision on the application made by the petitioner. After attaining age of majority, when the petitioner was in dire need of the job to maintain his widow mother and two younger brothers, an application for that purpose was made by him with all requisite details and strong recommendations have also been made by the Principal of G.P. High School, Mendrada where the petitioner's father was serving and yet the respondent authorities remained silent during all these years. There may not be any better case of carelessness or recklessness. If the petitioner's application was not in conformity with the established legal position or in conformity with the Government policy, the petitioner could have been informed by the respondent-authorities as to why the appointment was not given especially when a duty is cast upon him to take the decision and/or to communicate the same to the person concerned. It is a very serious act of dereliction of duty and whosoever is responsible for such dereliction of duty is answerable. Since this issue does not fall for consideration of this Court, this Court is not expressing any opinion on that aspect. Suffice it to say that the petitioner has sufferred a lot because of inaction on the part of the respondent authorities.

12. Considering all these aspects and in view of the legal and factual position discussed hereinabove, I am of the opinion that the present petition is required to be allowed and the same is allowed accordingly. In the result, I am directing the respondent-authorities or their agents and delegates in this regard to appoint the petitioner on the post of "Junior Clerk" or on the post to which he is found to be eligible for the appointment within the period of one month from the date of receiving either the writ of this Court or certified copy of this order. Rule is made absolute. Having regard to the

peculiar facts and circumstances of the present case, I am of the view that the petitioner is entitled to cost of this petition which is quantified at Rs. 2,000/= (Rupees Two Thousand only) and the same shall be paid to the petitioner along with the appointment order.

[K.A. Puj, J.]

rmr.